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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Yolo)

BOBBY HARRIS,

Plaintiff and Appellant,

v.

CITY OF WOODLAND,

Defendant and Respondent;

YOLO RESIDENTIAL INVESTORS, LLC,

Real Party in Interest and Respondent.

C087349

(Super. Ct. No. PT17753)

Bobby Harris filed a petition for writ of mandate pursuant to Code of Civil Procedure sections 1085 and 1094.5 against the City of Woodland (City) and real party in interest Yolo Residential Investors, LLC (Yolo Residential) following the City's approval

of the prudler tentative subdivision map project (the project). Harris challenged portions of the project approval, which consisted of the adoption of four resolutions and introduction of two ordinances and sought to compel the City to perform certain alleged ministerial duties in accordance with law.

The City and Yolo Residential collectively filed a motion for judgment denying the petition for writ of mandate pursuant to Code of Civil Procedure section 1094¹ (motion for judgment) on two grounds: (1) the project approval challenges were barred by the applicable statutes of limitations; and (2) the City's actions in approving the project were not arbitrary or capricious.

The trial court granted the motion for judgment and denied Harris's petition for writ of mandate. Harris appeals.

We affirm the trial court's ruling granting the motion for judgment with respect to Harris's challenges to the City's actions in approving the project on statute of limitation grounds.² We, however, reverse the trial court's order denying Harris's petition for writ of mandate because Harris's request for relief under Code of Civil Procedure

¹ Code of Civil Procedure section 1094 provides in pertinent part that "[i]f a petition for a writ of mandate . . . presents no triable issue of fact or is based solely on an administrative record, the matter may be determined by the court by noticed motion of any party for a judgment on the peremptory writ." A motion for judgment is the proper (and exclusive) procedural means for seeking a streamlined review of an agency's decision. (*Dunn v. County of Santa Barbara* (2006) 135 Cal.App.4th 1281, 1293.)

² Because we conclude the pertinent statutes of limitations barred Harris's challenges to the City's project approvals, we need not and do not discuss Harris's arguments that: (1) the trial court was unable to exercise independent judicial review because the City failed to file and provide the complete administrative record; (2) the trial court erred in denying his request for a limited continuance to conduct discovery to further complete the administrative record; and (3) the City's actions in approving the project were arbitrary and capricious.

section 1085 to compel the City to perform certain alleged ministerial duties in accordance with law remains pending and has not been dealt with by the trial court.

FACTUAL AND PROCEDURAL BACKGROUND

I

The Project Approval

On September 6, 2016, the city council approved the project described as “a request to amend the General Plan and Spring Lake Specific Plan, rezone the project site, and approve a Tentative Subdivision Map, Conditional Use Permit, and Development Agreement to allow the development of 183 detached single-family units in two phases with a 1.46-acre park on an approximately 38-acre site.” Approval of the project consisted of the city council: (1) adopting a resolution certifying the environmental impact report, and adopting findings of fact, a statement of overriding considerations, and a mitigation monitoring and reporting program for the project; (2) adopting a resolution amending the general plan land use diagram and circulation element for the project; (3) adopting a resolution amending the Spring Lake specific plan East Street cross section for the project; (4) adopting a resolution approving the tentative map and conditional use permit for the project; (5) introducing an ordinance rezoning the property; and (6) introducing an ordinance approving a development agreement.

II

The Allegations

On September 20, 2016, Harris notified the City pursuant to Government Code³ section 65009, subdivision (d), that the project approval violated sections 65913, 65913.2, subdivision (a), 65864 and 65867.5, subdivision (b), “predicated [on] violating City of Woodland’s voter-adopted, Urban Limit Line Ordinance and General Plan

³ All further section references are to the Government Code unless otherwise specified.

housing provisions.” The City failed to respond to the letter within 60 days, as required by section 65009, subdivision (d)(3)(A). Harris filed a petition for writ of mandate on May 17, 2017.

Harris alleged the project and the associated approved resolutions and ordinances violated, among other things, the City’s municipal code, inclusionary zoning ordinance, and affordable housing ordinance, the housing elements of the City’s general plan, and the voter-approved initiative known as the “City of Woodland Voter Approved Urban Limit Line Act.” Harris further alleged the City “refuse[d] or neglect[ed] to perform acts required by law as its clear and present ministerial duties, including substantial failures of its for-sale affordable housing, marketing program . . . , and absence of a proper infeasibility ‘demonstration’ . . . , alongside its chronic failure to perform acts by reasonable implementation of its [urban limit line ordinance]. . . .” Harris did not raise any challenge to the City’s environmental impact certification resolution.

In the prayer for relief, Harris sought: (1) to void and have set aside the “unlawful approval of Prudler Subdivision Project and Development Agreement” under Code of Civil Procedure section 1094.5; (2) to have “approval of Prudler Subdivision Project and Development Agreement” stayed pending resolution of the petition under Code of Civil Procedure section 1094.5, subdivision (g); (3) an “extraordinary writ compelling [the City] to fulfill its duties to properly establish implementation procedures for its affordable housing ordinance, related policies, and for its [urban limit line ordinance], correcting chronic issues and failures identified [in the petition]” under Code of Civil Procedure section 1085; (4) an order directing the City to prepare an accurate, complete and unabridged administrative record; and (5) any other relief the trial court deemed appropriate.

III

The Motion And Ruling

The City and Yolo Residential collectively filed a motion for judgment, arguing Harris “[wa]s not entitled to file or maintain a lawsuit challenging a specific development project well after the applicable limitations periods have expired” and “[wa]s not entitled to substitute his policy preferences for the legislative judgment and discretion of the City, and thus the approval actions of the City [could not] be lawfully voided by the Court.” With regard to the statute of limitations argument, the City and Yolo Residential asserted Harris’s challenge to the approval of the project subdivision map was governed by the 90-day statute of limitations under section 66499.37, and his general plan, zoning, and development agreement challenges were barred by the 90-day statute of limitations under section 65009, subdivision (c).

Harris opposed the motion, arguing section 65009, subdivision (d), established the appropriate limitations period because the “thrust” of his petition was premised on violations of section 65913 et seq., and specifically section 65913.2, subdivision (a). Harris further raised several “serialized rebuttals” to arguments in the motion for judgment, argued the City suppressed “relevant record materials,” requested a continuance of the hearing, and sought orders to compel depositions and production of documents. He also incorporated various documents into his opposition, including his “amended rebuttal brief opposing motion for demurrer, notice of motion for judicial sanction under CCP section 128.7,” in which he argued the “[p]etition also demands, through California Code of Civil Procedure Section 1085, that the City of Woodland fulfills its legal duties to establish proper implementation policy and procedures for its [affordable housing ordinance] and [urban limit line ordinance].”

The trial court granted the motion for judgment and denied Harris's petition for writ of mandate,⁴ specifying three rulings: (1) the petition to set aside the approval of the tentative map was denied as untimely, as barred by the statute of limitations in section 66499.37; (2) the petition to set aside the approval of the amendment to the City's general plan and Spring Lake specific plan, rezoning of the project site, and approval of the development agreement "on the basis that [the City's] actions violated Government Code sections 65913 and 65913.2(a)" was denied because Harris "fail[ed] to establish that [the City's] actions were arbitrary, capricious, entirely without evidentiary support, or procedurally unfair"; and (3) the petition to set aside the approval of the amendment to the City's general plan and Spring Lake specific plan, rezoning of the project site, and approval of the development agreement, on all other grounds, was denied as untimely, as barred by the statute of limitations in section 65009, subdivision (c).

Harris appeals.

DISCUSSION

When the material facts are undisputed, raising a purely legal question, the appellate court exercises independent judgment, no matter whether the issue arises by traditional or administrative mandate. (*Conlan v. Bontá* (2002) 102 Cal.App.4th 745, 753.)

I

Challenges To The Project Approval Actions, Except For The Tentative Map Approval, Are Time Barred Under Section 65009, Subdivision (c)(1)

"Located in division 1 (Planning and Zoning) of title 7 (Planning and Land Use) of the Government Code, section 65009 is intended 'to provide certainty for property

⁴ The order states: "Respondent's motion for judgment on peremptory writ is **GRANTED**. (Code Civ. Proc., §§ 1087, 1094.) Petitioner Bobby Harris'[s] petition for writ of mandate is **DENIED**. (Code Civ. Proc., §§ 1085, 1094.5.)"

owners and local governments regarding decisions made pursuant to this division’ (§ 65009, subd. (a)(3)) and thus to alleviate the ‘chilling effect on the confidence with which property owners and local governments can proceed with projects’ (*id.*, subd. (a)(2)) created by potential legal challenges to local planning and zoning decisions.” (*Travis v. County of Santa Cruz* (2004) 33 Cal.4th 757, 765.)

To that end, section 65009 imposes relatively short statutes of limitation on legal challenges to local land use decisions. Section 65009, subdivision (c)(1), provides that, “[e]xcept as provided in subdivision (d), no action or proceeding shall be maintained in any of the following cases by any person unless the action or proceeding is commenced and service is made on the legislative body within 90 days after the legislative body’s decision: [¶] (A) To attack, review, set aside, void, or annul the decision of a legislative body to adopt or amend a general or specific plan. . . . [¶] (B) To attack, review, set aside, void, or annul the decision of a legislative body to adopt or amend a zoning ordinance. [¶] (C) To determine the reasonableness, legality, or validity of any decision to adopt or amend any regulation attached to a specific plan. [¶] (D) To attack, review, set aside, void, or annul the decision of a legislative body to adopt, amend, or modify a development agreement. . . . [¶] (E) To attack, review, set aside, void, or annul any decision on the matters listed in Sections 65901 and 65903, or to determine the reasonableness, legality, or validity of any condition attached to a variance, conditional use permit, or any other permit. [¶] (F) Concerning any of the proceedings, acts, or determinations taken, done, or made prior to any of the decisions listed in subparagraphs (A), (B), (C), (D), and (E).”

Section 65009, subdivision (d)(1)(A), (B), extends the limitations period “if the action or proceeding meets both of the following requirements: [¶] (A) It is brought in support of or to encourage or facilitate the development of housing that would increase the community’s supply of housing affordable to persons and families with low or moderate incomes [as defined in three statutes]. This subdivision is not intended to

require that the action or proceeding be brought in support of or to encourage or facilitate a specific housing development project. [¶] (B) It is brought with respect to the adoption or revision of a housing element pursuant to Article 10.6 (commencing with Section 65580) of Chapter 3, actions taken pursuant to Section 65863.6, or Chapter 4.2 (commencing with Section 65913), or to challenge the adequacy of an ordinance adopted pursuant to Section 65915.” Harris relies on the extended limitations period in section 65009, subdivision (d)(2)(C), which provides: “An action or proceeding challenging an action taken pursuant to Section 65863.6, or Chapter 4.2 (commencing with Section 65913), or to challenge the adequacy of an ordinance adopted pursuant to Section 65915 shall be served within 180 days after the accrual of the cause of action as provided in this subdivision.”

Pertinent to Harris’s claims, “[t]he land use planning statutes to which section 65009, subdivision (d), applies [include]: . . . Section 65863.6 requires that any local ordinance that ‘limits the number of housing units which may be constructed on an annual basis shall contain findings as to the public health, safety, and welfare of the city or county to be promoted by the adoption of the ordinance which justify reducing the housing opportunities of the region.’ Chapter 4.2 contains the ‘Least Cost Zoning Law’ (§ 65913 et seq.), which requires that cities zone sufficient vacant land at densities that can accommodate low-income affordable housing. Finally, section 65915 concerns the award of ‘density bonus[es]’ for the construction of low-income housing” (*Urban Habitat Program v. City of Pleasanton* (2008) 164 Cal.App.4th 1561, 1574, fn. 3.)⁵

⁵ Some of these statutes have been amended since 2008; however, the amendments are immaterial to this appeal. (Stats. 2018, ch. 856, § 9 [amending § 65863.6]; Stats. 2018, ch. 840, § 2 [amending § 65913.4]; Stats. 2018, ch. 937, § 1.3 [amending § 65915].)

The 90-day limitations period under section 65009, subdivision (c)(1), expressly and unequivocally applies to Harris’s request to void and have set aside the two resolutions amending the general plan and the Spring Lake specific plan (§ 65009, subd. (c)(1)(A)), the resolution approving the conditional use permit (*id.*, subd. (c)(1)(E)), the zoning ordinance (*id.*, subd. (c)(1)(B)), and the development agreement ordinance (*id.*, subd. (c)(1)(D)). The statute requires that the “action or proceeding” be commenced and service be made within 90 days of the legislative body’s decision. (§ 65009, subd. (c)(1).) The notice served on September 20, 2016, did not commence an action or proceeding within the meaning of section 65009, subdivision (c)(1). This is evident by the Legislature’s distinction between a notice and an action or proceeding in section 65009, subdivision (d). (Cf. § 65009, subd. (d)(3)(A) [cause of action accrues 60 days after notice is filed] with *id.*, subd. (d)(2)(C) [action or proceeding shall be served within 180 days after the accrual of the cause of action].) And, it is undisputed the petition was filed more than 90 days after the City’s approval of the resolutions and ordinances.

The problem with Harris’s reliance on section 65009, subdivision (d), is that the provision contains a two-pronged requirement for application of the extended limitations period stated therein. Harris’s argument fails under the second prong because he points us to no evidence in the record (nor do we find any) that the “actions taken” by the City in approving the project were “actions taken pursuant to” the land use planning statutes delineated in subdivision (d)(2),⁶ and Harris does not challenge the adequacy of a density bonus ordinance adopted pursuant to section 65915.

⁶ That Harris’s challenges to the project approvals were “on the basis that [the City’s] actions violated Government Code sections 65913 and 65913.2[, subdivision] (a),” as the trial court stated, does not bring the claims within the ambit of section 65009, subdivision (d). Section 65009, subdivision (d), is clear that it

Accordingly, Harris's request to void and have set aside the project approval resolutions and ordinances, except for the tentative map approval, is time barred under section 65009, subdivision (c)(1).

II

The Challenge To The Tentative Map Approval Is Time Barred Under Section 66499.37

The pertinent statute governing judicial review of a tentative map or final map approval is section 66499.37, which provides: "Any action or proceeding to attack, review, set aside, void, or annul the decision of an advisory agency, appeal board, or legislative body concerning a subdivision, or of any of the proceedings, acts, or determinations taken, done, or made prior to the decision, or to determine the reasonableness, legality, or validity of any condition attached thereto, including, but not limited to, the approval of a tentative map or final map, shall not be maintained by any person unless the action or proceeding is commenced and service of summons effected within 90 days after the date of the decision. Thereafter all persons are barred from any action or proceeding or any defense of invalidity or unreasonableness of the decision or of the proceedings, acts, or determinations. The proceeding shall take precedence over all matters of the calendar of the court except criminal, probate, eminent domain, forcible entry, and unlawful detainer proceedings."

As we explained *ante*, section 65009, subdivision (d), is inapplicable to Harris's claims; accordingly, there is no conflict to reconcile between sections 66499.37 and 65009, subdivision (d), as Harris contends. It is undisputed the petition was filed more than 90 days after the City's approval of the tentative map. Harris's challenge to the tentative map approval is therefore time barred under section 66499.37.

applies only to "actions taken pursuant to" section 65913 et seq. (§ 65009, subd. (d)(1), (2).)

III

The Trial Court Erred In Denying The Petition For Writ Of Mandate In Its Entirety

Harris contends the trial court failed to consider his request for mandamus relief under Code of Civil Procedure section 1085. In that request, Harris sought to compel the City to perform certain alleged ministerial duties as required by law. The City and Yolo Residential do not address this contention on appeal.

We agree with Harris that the trial court erred in denying the petition for writ of mandate because the City and Yolo Residential did not move for judgment on his request to compel the City to perform certain alleged ministerial duties, and the trial court did not rule on that claim either. Because that claim survives and will need to be adjudicated in the future, the trial court erred in denying the petition for writ in its entirety.

DISPOSITION

We affirm the trial court's order granting the motion for judgment on Harris's petition to void and have set aside the project approval resolutions and ordinances. We reverse the trial court's order denying Harris's petition for writ as discussed herein. The parties shall bear their own costs on appeal. (Cal. Rules of Court, rule 8.278(a)(3), (5).)

/s/
Robie, J.

We concur:

/s/
Raye, P. J.

/s/
Krause, J.